identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529 - 2090

U.S. Citizenship and Immigration Services

L1

[redacted]

DATE: FEB 2 2 2012 Office: LOS ANGELES FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C.§ 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Los Angeles, California, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. The director determined that the applicant did not establish by a preponderance of the evidence that she had entered and continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate (NOIT). The director terminated the applicant's temporary resident status, finding that the applicant had not met her burden of proof and that she was therefore not eligible to adjust from temporary resident status pursuant to Section 245A of the Act.

On appeal, the applicant states that she did not respond to the NOIT because she did not understand the decision and by the time someone was able to translate it for her, the time allowed to respond had pasted. The applicant requests that her case be reconsidered.

The regulation at 8 C.F.R. § 245a.2(u)(1)(i) prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if "[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]" The applicant bears the burden to establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the

aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See* 8 C.F.R.§ 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. Doubt cast

on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. The director subsequently issued a NOIT, informing the applicant of her failure to establish eligibility for temporary residence. The director found that the applicant failed to provide sufficient evidence to establish that she entered the United States prior to January 1, 1982 and resided in a continuous unlawful status in the United States during the requisite period, and terminated the applicant's temporary residence.

The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits and other evidence. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant claimed on her class membership form and her initial Form I-687 application that she first entered the United States without inspection in November 1981. The applicant also claimed on her initial and current Form I-687 applications that she resided in the United States from 1981 to 1984 at [redacted] California and [redacted], California from 1984 to 1988. However, [redacted] states in her affidavits dated October 16, 1992 that the applicant worked for her as a babysitter and live-in housekeeper from 1981 to 1988 at [redacted]ifornia; that the applicant was her tenant from 1981 to 1984 at [redacted]alifornia; and that the applicant was her tenant from 1984 to 1988 at [redacted]

[redacted] states in her affidavit that the applicant worked for her as a housekeeper at her home in [redacted] California. [redacted] states that she personally knows and been acquainted with the applicant in the United States since 1982 [redacted] does not indicate in her affidavit when the applicant began working for her as a housekeeper.

[redacted] states in her affidavit that she personally knows and has been acquainted with the applicant and knows the applicant resided in the United States from 1982. [redacted] also states that she met the applicant at a birthday party and that she was her babysitter. [redacted] does not indicate when and where the applicant was her babysitter.

No evidence in the record can resolve this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent

objective evidence pointing to where the truth lies. No objective evidence of record resolves this inconsistency. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, [redacted] state in their affidavits that the applicant worked for them. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The letters do not identify the exact period of employment, show periods of layoff; state the applicant's duties; declare whether the information was taken from the employer's records; and, identify the location of such employer's records and state whether such records are accessible or in the alternative state the reason why such records are unavailable and therefore, they will be given nominal weight.

The applicant submits affidavits from [redacted] to establish her initial entry and residence in the United States during the requisite period. [redacted] states that the applicant was employed as a housekeeper from 1988 to 1990. [redacted] states that the applicant was his tenant from 1988 to 1993. [redacted] states that she knows the applicant resided in the United States since 1988. [redacted] states that she knows the applicant since 1988 because she was working as a babysitter in her home.

[redacted] states he has personally known and been acquainted with the applicant from 1981 to 1988. He also states on his affidavit that they met at a party in 1981. [redacted] failed to indicate any other details in his affidavit that would lend credence to his claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

[redacted] states in her affidavit that she met the applicant in 1982 at her sister's house. [redacted] does not give any other details in her affidavit about the applicant.

[redacted] states in her affidavit that she knows the applicant since 1981 and that she drove the applicant to [redacted] on May 9, 1987, where she took a bus to Morelos, Mexico because her mother was sick. [redacted] does not give any other details in her affidavit pertaining to the applicant.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they generally met the applicant in the 1980s.

Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. None of them address the inconsistencies noted in the director's Notice of Intent to Terminate (NOIT) and Notice of Terminate (NOT). The applicant has failed to provide probative and credible evidence of her entry and continuous residence in the United States during the requisite statutory period.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has been given the opportunity to satisfy his burden of proof. The AAO finds that the applicant's temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). Thus, the appeal in this matter will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.